The Planning Inspectorate

Appeal Decision

Site visit made on 4 September 2020

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 31 March 2021

Appeal ref: APP/B5480/C/19/3242445
Land at Car Park at Lennards Public House, New Road, Rainham, RM13 9EB

- The **appeal is made** by Mr Walter Marting o/b KMDS Designs under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice (ref: ENF/607/16) issued by the Council of the London Borough of Havering on 1 November 2019.
- The **breaches of planning control as alleged in the notice** are:
  - Without the benefit of planning permission, the material change of use of the land shown hatched in black on the attached plan from a car parking area to
    - I. Use as a commercial yard, office and training site; and
    - II. Use for the storage of building materials, timber and storage racks in the car parking area; and
    - III. Residential use facilitated through the parking of a caravan; and
    - IV. Parking of Heavy Goods Vehicles; and
  - Without the benefit of planning permission, unlawful development in the form of:
    - V. Placement of metal containers in connection with storage of building materials, ladders and tools; and
    - VI. Placement of roll on/roll off skips; and
    - VII. Erection of permanent buildings for office uses, training centre and for the storage of goods in connection with the unauthorised uses; and
    - VIII. Erection of site hut; and
    - IX. Erection of metal racks for storage purposes in the car park.
- The **requirements of the notice** are to:
  1. Cease the use of the land shown hatched in black on the attached plan for the storage of metal containers, storage of a caravan used for residential purposes, storage of building materials including rubble, storage of metal racks and any other plant equipment stored associated with the unlawful use;
  2. Remove from the land all structures including permanent and temporary buildings, metal containers, storage racks, sheds erected using corrugated sheets; and
  3. Remove all building materials, rubble and debris and any plant machinery associated with taking steps 1 and 2 above and return the land back to the condition before the unauthorised use started.
- The **period for compliance** with the requirements of the notice is two (2) months.
- The **appeal is proceeding on the grounds** set out under section 174(2)(a), (c), (d) and (g) of the Town and Country Planning Act 1990. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary of the Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation as set out below in the Formal Decision.

PRELIMINARY MATTERS

1. I shall refer in this decision letter to:

- The 'appeal site', being the land subject to the enforcement notice. It lies to the northwest of Lennards public house and forms part of the freehold of that property. It is located on the edge of the village of Wennington and within a designated Green Belt. The site includes buildings, a yard and 'site access'.
- The '(whole) property' which includes the public house, its beer garden and its retained car park, plus the appeal site. Lennards is a grade II listed building which stands on the west side of New Road (the A1306).
- The 'shared drive' within the property, which leads from a gate at the end of a slip road off Wennington Road (the B1335). There is a fork in the shared drive a few metres after the gate so drivers can proceed south west to the retained public house car park or turn north onto the site access.

2. The site is occupied by the Blara Group, a construction company which provides building and civil engineering services on commercial and industrial projects, particularly for the rail network. Another construction firm known as the Margal Group also occupies the site but has not participated in this appeal.

3. The Blara Group is described as the appellant's company but I have seen no explanation of their relationship with KMDS Designs. The 'appellant' should be taken as meaning KMDS Designs, and I shall refer specifically to the Blara Group or site occupiers where appropriate.

4. The enforcement notice was issued after the Council refused, on 19 September 2019, an application (ref: P1500.17) for planning permission for '*the retention of the use…as a commercial yard, office and training site. The provision of both permanent and temporary structures, the stationing of containers…[and] provision of storage and associated parking*'. I shall refer to this as the '2019 application' and I understand that it related essentially to the alleged yard but not all of the site.

5. I shall also refer to Buildings 1-3 and A-M. Buildings A-M are identified on drawing PL-5625_03 which was submitted with the 2019 application. Buildings 1-3 stand on the part of the site that was not subject to the 2019 application; they are shown on aerial photographs appended to the appellant's statement of case.

THE ENFORCEMENT NOTICE

6. Under s176(1)(a) of the Town and Country Planning Act 1990 (TCPA90), I may correct any error, defect or misdescription in the enforcement notice so long as this does not cause injustice to the appellant or the Council. The appealed notice is defective and/or unclear in the following respects:

- It describes a change of use to different uses, and so it ought to allege that there has been a material change of use to a mixed use.
- The allegation distinguishes between 'use' and 'development', indicating that the latter refers strictly to buildings or other forms of operational development. As the appellant indicates, however, some of the alleged 'developments' are temporary structures or chattels.
- The allegation refers to the 'parking' of a caravan while the requirements refer to this structure being 'stored'. Caravans are normally said to 'stationed' or 'sited' to facilitate a change of use, and the use of the caravan in this case is said to be residential not parking or storage.
- The notice does not require the cessation of the office, training and residential component uses of the mixed use.

- The 'developments' are described in different terms in the allegation and requirements, creating uncertainty as to what must to be removed.

7. Correcting the allegation would simply clarify the matters and allow the grounds of appeal to be considered properly. However, correcting the requirements is not so straightforward because stipulating that additional uses must cease will make the notice more onerous to comply with. Nonetheless, I wrote to the parties to suggest that I can correct the notice without causing injustice and they agreed. Compliance with the notice as it stands would effectively curtail the occupiers' use of the site.

THE LEGAL GROUNDS OF APPEAL

8. The appellant has made a combined case for grounds (c) and (d).

   - Ground (c) is that the matters alleged in the notice do not constitute a breach of planning control – perhaps because what is alleged does not require or already has planning permission.

   - Ground (d) is that, at the date the notice was issued, it was too late for enforcement action to be taken. The appellant has to show that what is alleged is immune from enforcement under s171B of the TCPA90 which provides, in short, that no enforcement action may be taken against operational development or a material change of use after four or ten years respectively.

9. The appellant's submissions include that there is no residential use of the site – and I take that to be a hidden ground (b), which is that the matters have not occurred. With regard to the change of use otherwise, and to the permanent buildings on the site, the appellant's case is simply that they are immune from enforcement action under the ten and four year rules respectively. It is necessary to decide which structures are 'buildings' or not, and that question often falls within the purview of ground (c), but it must be addressed here in the context of time.

10. The appellant has raised ground (c) considerations insofar as it is claimed that temporary structures on the site are not in breach of planning control – but that argument is based on the supposition that the structures are not part of the alleged use because they were brought to the site after the use began. It follows that the relationship between the structures and use must be addressed after I have determined when the change of use took place.

11. Indeed, a notice may require the removal of buildings as well as structures and chattels if they facilitate an unlawful use, and whether they were placed on the land at the same time as or later than the change of use. This is in order that the land is restored to its former condition and the breach is remedied.

12. I find that the relevant legal grounds are (b) and (d) but not (c). Considering the appeal on this basis will not prejudice any party because their representations remain relevant. For grounds (b) and (d), the onus is on the appellant to make their case on the balance of probabilities; their evidence should be accepted if it is sufficiently precise and unambiguous and there is nothing to contradict their version of events or make it less than probable.

The Appeal on Ground (b)

13. The appellant states that the alleged caravan has been used solely 'as a staff rest area and for occasional overnight stays for security purposes in association with [the] commercial yard'. It would not be a stretch to interpret 'overnight stays' as meaning that the caravan is used for eating, sleeping, washing and relaxing, and

thus potentially for residential use. It is unfortunate that the appellant did not corroborate or explain the 'occasional' claim, but I still find their case plausible.

14. The Council maintains that the caravan is in residential use but has provided no supporting evidence. I realise that there is no onus on the Council to back up its allegation but there are usually some signs when residential use is taking place. None of the photographs before me show what might be termed domestic paraphernalia. Neither the report on the 2019 application nor the Council's appeal statement describes any manifestations or effects of the alleged residential use.

15. While caravans are by definition designed for 'human habitation', they are in practice stationed for various purposes. It cannot be assumed that residential use is taking place simply because a caravan is on land, particularly when it is common ground that there is an active non-residential use. On the admittedly limited evidence, I find it more likely than not that residential use is not being carried out on this site as a matter of fact.

16. I conclude that the hidden appeal on ground (b) should succeed. Since there is no dispute otherwise as to the lawful or new use of the land, the notice should be corrected to allege that there has been a material change of use from parking to use as an engineering, building and construction yard comprising a mix of office, training centre, storage and parking uses with incidental security and amenity use.

The Appeal on Ground (d)

The Alleged Material Change of Use

17. Under s171B(3) of the TCPA90, no enforcement action may be taken after the end of the period of ten years beginning with the date of a breach of planning control consisting of a material change of use of land. The alleged change of use must have taken place by no later than 1 November 2009, ten years before the notice was issued, and the unauthorised use must have taken place without significant interruption such that the Council could have enforced against it at any time during the ten year period.

18. The appellant claims that the alleged use has taken place for more than ten years because the site was used as a builders' storage yard before the Blara Group moved there in 2014. Even if that is correct, the appellant's case is on its face too limited; an argument that storage is immune from enforcement action is not an argument that the alleged mixed use is immune. A mixed use must be considered as one; the appeal can only succeed on ground (d) if it is shown that what is alleged continued for a ten year period on the balance of probability.

19. The notice as issued did not use the term 'mixed use' but it plainly described different uses and the appellant does not claim that any are merely incidental[1]. In fairness, the appellant does refer to parking taking place on the pre-2014 storage yard and claim that at least one building which is now used as an office was erected before that year. However, there is no evidence or even hint that the previous occupiers used the site for the provision of training – and that must be a component of the alleged mixed use because the appellant relies, in their case for ground (a), on the merits of the site being used for the delivery of National Vocational Qualification (NVQ) course training to up to 100 students per week.

20. Nonetheless, I shall look with an open mind at the evidence submitted in support of ground (d). The appellant relies on aerial and other photographs which I shall

[1] An incidental use is one which is functionally related in some normal way to a primary use, as opposed to being a primary use in its own right or an intrinsic part of a primary use.

examine in chronological order and accept as reliable unless stated. The first aerial photograph was taken in 1999 and shows the site as hard-surfaced but without buildings. It is probable that the site was used as a car park and the Council had succeeded in enforcement action taken, seemingly in 1994, against the 'use of the public house car park extension for storage and parking of caravans and tyres'[2].

21. The next aerial photograph is dated '2000-2003', and I can disregard the ambiguity of that timeframe because the site looks much the same in an aerial photograph dated '2004'. However, there is a problem for the appellant in that while both images show Buildings 1 and A, a few HGVs and perhaps one or two containers on the land, neither reveals how the buildings or site as a whole were then used. And there is now a five year gap in the evidence[3] and so it has not been demonstrated that any unauthorised use continued beyond 2004 without significant interruption.

22. The clock re-starts from May 2009, the date of a Google Streetview photograph. The appellant claims that this picture 'clearly shows the site in use as a storage yard' and I accept that there appear to be skips and perhaps a portacabin as well cars and a truck on the land. However, the photograph does not show the alleged mixed use taking place on the balance of probabilities.

23. There is now another gap in the evidence with the next aerial photograph being dated '2010-12'. This time, the haziness of the date is problematic because it means that the photograph could have been taken anywhere from two months to two years after 1 November 2009. But then the photograph is unhelpful anyway because it shows Buildings 2 and B as well as 1 and A, plus a few vehicles, containers and skips on the land, but not that the site was used for office and training as well as storage and parking purposes. The 2013 aerial photograph shows Building 3 but few containers and it was taken well after the material date.

24. It may be the case that the site ceased to be used (solely) for parking prior to 1 November 2009. I conclude, however, that the appellant has not shown that the alleged mixed use had probably been carried out for ten years without significant interruption by the date that the notice was issued. Given the evidence below of subsequent works, it is more likely that the change of use occurred when the Blara Group moved to the site in 2014.

The Alleged Unlawful Development

25. S171B(1) of the TCPA90 provides that no enforcement action may be taken in respect of a breach of planning control consisting in the carrying on of building or other operations after the end of the period of four years beginning with the date on which the operations were substantially completed. The appellant must show that the operations involved in the construction of any building on the site were substantially completed by no later than 1 November 2015.

26. 'Building operations' will have taken place if what was done resulted in a 'building' as defined under s336(1): '*any structure or erection and any part of a building, but not plant or machinery comprised within a building*'. If it is necessary to decide whether a structure is a building, regard should be had its size, permanence and attachment to the ground, albeit that none of those factors is necessarily decisive.

27. Buildings 1-3 are uncontroversial; there is no dispute that these large and fixed structures are indeed buildings. Building 1 can be seen in and from the 2000-3 aerial photograph; Buildings 2 and 3 can be seen in and from the 2010-12 and

[2] Council ref: ENF/9007/94.
[3] The appellant's statement indicates on p9 that Building B was erected in April 2007 but that claim is contradicted on p25 and in aerial photographs as described below.

2013 aerial photographs respectively. On the balance of probabilities, Buildings 1, 2 and 3 are immune from enforcement action because they were substantially completed more than four years before the notice was issued, and they pre-date the alleged change of use.

28. I also find that Buildings A and B are 'buildings' as such, not least because the Council stated in its report on the 2019 application that 'the more permanent structures are grouped together towards the west of the site'[4]. Buildings A and B are visible in and from the 2010-12 aerial photograph, and so it is probable that they were substantially completed more than four years before the notice was issued – and that they were not built to facilitate the alleged change of use. It was too late for the Council to enforce against Buildings A and B when it did.

29. Building C is to the west of the site but it is a portacabin[5]. Whether or not it is a permanent structure, the appellant has not demonstrated that Building C was erected in March 2014 as claimed[6]. Indeed, it is not identified or visible on the aerial or Streetview photographs taken in that year. As the appellant states, Building C can be seen in the 2018 aerial photograph[7], but that was taken well after 1 November 2015. It suggests that Building C was installed to facilitate the alleged mixed use which is not immune under the ten year rule.

30. Building E is at least partially faced in brick[8] and likely to be a 'building' that is capable of benefitting from the four year rule set out under s171B(1). It can be seen on the 2014 aerial photograph and so I am satisfied that it was erected more than four years before the notice was issued. However, although it is indicated on p9 of the appellant's statement that Building E was erected in August 2013, there is no other evidence of this structure pre-dating the material change of use.

31. The 2014 aerial photograph shows Buildings K[9] and L – a fixed container and a moveable site hut – as well as E. The appellant said in their statement that: '*In 2014, the [Blara Group] took occupation of the site and started to erect the necessary building [sic] required for their business needs. Within the aerial photograph Building E, K and L can be seen…'* On the balance of probabilities, Buildings E, K and L were erected to facilitate the change of use. Whether or not any of those structures are permanent and more than four years old, the notice can require that they are removed.

32. There is no evidence of Buildings D, F, G, H, I, J or M being on the site before the change of use took place. The appellant has not shown that the items which are clearly moveable structures or chattels, namely the metal racks and containers, roll on/roll off skips and the incidental caravan, are not sited to enable the alleged use. They are not immune from enforcement action even if containers and skips were on (and off) the land in association with the lawful or some other previous use.

Conclusion on Ground (d)

33. I conclude that the appellant has not demonstrated that the use of the land as an engineering, building and construction yard comprising a mix of office, training centre, storage and parking uses, plus incidental security and staff amenity use had taken place, on the date that the notice was issued, for any continuous ten

[4] Buildings 1-3 are also to the west but, as noted above, they were outside of the 2019 site.
[5] Photograph on drawing no. PL-5625_06A.
[6] The appellant has not said when in 2014 the Blara Group moved to the site. My guess is February or March from the references to 'building' works at that time, but I allow that it could have been another month.
[7] Any portacabin shown on the May 2009 Streetview photograph is in a different place to Building C.
[8] Photograph on drawing no. PL-5625_07
[9] Photograph on drawing no. PL-5625_09

year period. On the balance of probabilities, it was not too late for the Council to take enforcement action when it did against that mixed use.

34. I have found that Buildings 1, 2, 3, A and B are permanent buildings which pre-date the alleged change of use and are immune from enforcement action under s171B(1). I make no finding on how these buildings may be lawfully used; it may be that some or all have a nil use to all intents and purposes if they cannot be utilised in association with parking. Even so, I shall correct the notice so that it does not allege the construction or require the removal of those buildings.

35. I shall also correct the notice so it does not allege that there was any unauthorised operational development but rather states that Buildings C-M (which include the site hut) alongside the metal racks and containers, roll on/roll off skips and caravan were erected or installed in order to facilitate the alleged change of use[10]. Subject to the corrections to the notice, the appeal fails on ground (d).

THE APPEAL ON GROUND (A) AND THE DEEMED PLANNING APPLICATION

Description of Development

36. The appeal on ground (a) is that planning permission ought to be granted for what is alleged by the notice as corrected:

Without the benefit of planning permission, the making of a material change of use of the land shown hatched black on the attached site plan from a car parking area to use as an engineering, building and construction yard comprising a mix of office, training centre, storage and parking uses, plus incidental security and staff amenity use, facilitated by the construction or stationing of the structures marked as Buildings C-M on drawing no PL-5625_03 attached to this notice and the stationing of metal racks and containers, roll on/roll off skips and a caravan.

37. The Council referred to palisade fencing and gates at the site but they were not mentioned in the allegation and it would cause injustice to extend the scope of the notice in this regard now. Any fencing and gates are outside of my remit, though I note that the gates seemed to have gone and the fence to be formed of timber on the date of my visit.

Main Issues

38. I consider that main planning issues in this case are:

- Whether the alleged mixed use is inappropriate development in the Green Belt as described in the National Planning Policy Framework (NPPF) and any relevant development plan policies.
- The effect of the mixed use on the character and appearance of the area.
- Its effect on the setting of the listed building.
- Its effect on the risk of flooding on the appeal site and elsewhere.
- Other considerations: economic, social and other benefits of the mixed use.
- The overall planning balance: whether any harm caused to the Green Belt by reason of inappropriateness and any other harm would be clearly outweighed by other considerations, so as to amount to the very special circumstances which are necessary to justify inappropriate development.

[10] I shall therefore correct the notice further by attaching a copy of drawing number PL-5625_03, as well as the existing site plan, for reference purposes.

Reasons

Inappropriate Development in the Green Belt

39. The NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Thus, the NPPF also states that the making of a material change in the use of land is not inappropriate development in the Green Belt provided that the openness of the Green Belt is preserved and there is no conflict with the purposes of including land within the Green Belt.

40. The effects of the appeal use on the openness of the Green Belt must be compared with the effects of what is lawful: the use of the site as a car park with the land being wholly hard-surfaced and Buildings 1, 2, 3, A and B in situ. The appellant suggests that, prior to the change of use, vehicles associated with nearby industrial firms as well as the public house were parked on the site. If there is reversion to the lawful use, Covid-19 restrictions aside, I accept that the site could be filled with parked vehicles including HGVs throughout most days and evenings. However, there is little evidence that the site would normally be parked up 24/7 or that additional buildings, structures or chattels would be required.

41. I read the appellant's statement as showing that continuation of the mixed use would involve the retention of not just Buildings 1, 2, 3, A and B, but also Buildings C-M, the metal racks and containers, roll on/roll off skips and the caravan. Also present on the land would be whatever is stored – building materials, timber, ladders and tools were mentioned on the notice as issued – as well as whatever HGVs or other vehicles are parked in association with the use at any time.

42. There is no suggestion that the Blara Group could continue to operate with any building or structure mentioned in this decision letter being removed from the site. There is no proposal to carry out the mixed use with the land being less cluttered than it is now. I find the buildings, structures and chattels associated with the mixed use are, in aggregate, more permanent and greater in number and size than what would be on the land otherwise. The change of use has not preserved but reduced the openness of the Green Belt in physical or spatial terms.

43. Openness can have a visual dimension[11] and the appellant argues that the appeal use is not seen to cause unacceptable harm to the Green Belt, given landscaping on the site boundaries and the presence of other industrial and commercial uses nearby. However, activities and structures on the site are visible from the B1335 as the backdrop to a paddock and as diminishing the openness of the area. The site could be screened on that side, as discussed below, but that would only remedy the perceived, not actual loss of openness in the Green Belt.

44. Paragraph 145g) of the NPPF states that the construction of new buildings should be regarded as inappropriate development in the Green Belt, except where the works are carried out as limited infilling or the partial or complete redevelopment of previously developed land. The site is previously developed and I take the appellant's point that infill and redevelopment schemes often involve the change of use of the land. However, paragraph 145g) is not concerned with changes of use, and in any event the exception does not apply where, as I have found here, the

[11] The appellant referred to discussion of the 'visual dimension of openness' in *Turner v SSCLG & East Dorset DC* [2015] EWHC 2728 (Admin). That case was later heard in the Court of Appeal in [2016] EWCA Civ 466, and that judgment was endorsed by the Supreme Court in *R (oao Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire CC* [2020] UKSC 3. The word 'openness' is to be taken as open-textured and a number of factors are capable of being relevant to the facts of a specific case; how to take account of visual effects is a matter of planning judgment rather than law.

works would have a greater impact on the openness of the Green Belt than the existing (or lawful) development.

45. The appellant suggests that, given the lawful use and pre-existing buildings and hardsurfacing and use, the alleged change of use does not add to urban sprawl, encroach on the countryside or otherwise conflict with the purposes of including land within the Green Belt. However, that the use does not preserve openness is sufficient for me to conclude that it is inappropriate development in the Green Belt as described in the NPPF. It conflicts with Policy DC45 of the Havering Core Strategy and Development Control Policies Development Plan Document (DPD) which only permits the redevelopment of commercial sites in the Green Belt provided that there is a substantial decrease in the amount of building on the site.

Character and Appearance

46. The reasons for the enforcement notice include that the alleged use and associated structures cause 'landscaping and visual harms'. The Council's statement suggests that the '*permanent [and] temporary structures, containers, enclosures and all materials stored in open air…appear quite obtrusive [and] unsightly'*. I agree with that assessment and find that the use detracts from the character and appearance of the local area, particularly when seen from the B1335 across the paddock.

47. However, it does not follow that I would be justified in refusing permission on the ground of visual harm alone. The Council has not, in my view, shown that or how the use is *unacceptably* intrusive. As the appellant says, the site adjoins or is close to other industrial and commercial uses and developments, such as Wennington Marsh Farm to the west. I realise that there are also fields nearby but, even so, the appeal use does not appear unacceptably incongruous in its setting.

48. It is necessary to take account of fact that the site was already hard-surfaced and can be used lawfully for parking vehicles; dismissing the appeal would not make the land look more 'rural' than it does now. The western, southern and eastern boundaries of the site are delineated by a mix of deciduous and evergreen trees and shrubs and I agree with the appellant that a condition could be imposed to require more planting on the northern or paddock side of the site.

49. Screening development would not amount to an improvement to the local Green Belt environment as envisaged by Policy DC45, such that the visual impact of the use could be described as a positively beneficial. Screening is not even always enough to overcome visual or landscape harm but, subject to control over the nature, size and density of species planted, it would be adequate mitigation in this case given the lawful use and urban fringe nature of the wider area.

50. There is no evidence that the change of use from parking has generated any, let alone an unacceptable increase in vehicular activity or noise or light pollution. I conclude that the mixed use causes some harm to the character and appearance of the surrounding area but, subject to a landscaping condition, the harm would not be unacceptable or, on its own, warrant a refusal of permission.

Setting of the Listed Building

51. In considering whether to permit the alleged development, I must have special regard and ascribe considerable importance and weight to the desirability of preserving the setting of the grade II listed building on the property[12]. I must also, in accordance with the NPPF, identify and assess the particular significance of the

[12] S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990; *Barnwell Manor Wind Energy Ltd v East Northamptonshire DC & Others* [2014] EWCA Civ 137.

heritage asset and give great weight to its conservation. Any harm to the significance of a listed building, including from development within its setting, requires clear and convincing justification.

52. The Council considers that, given its previous use, the site forms part of the curtilage of the public house. The NPPF, however, defines the setting of a heritage asset as 'the surroundings in which a heritage asset is experienced…' There is no mention of 'curtilage' and this is because 'curtilage' is not the same thing as 'setting'[13]. I will set aside any curtilage question and focus on the Council's objection that the mixed use has harmed the setting of the listed building.

53. The building was listed in 1981 as an '*early C19 [nineteenth century] house in rendered brick [with a] facing C16 timber-framed wing at rear…Some original detailing remains internally*'. I saw that the Georgian, two storey part of the public house adjoins and faces the A1306, while the timber-framed structure can be seen in part from the retained car park at the rear. With regard to the letter from the occupiers of Willow Farm House, the significance of the heritage asset is likely to lie in the architectural and historic interest of the public house given its contribution to the character and development of New Road and nearby villages[14].

54. However, the wider area is clearly much changed since the C19 and the public house has been modified over time. Even at the time of listing, the building had modern roofs and windows. It now has a side extension which I guess was built after 1981 and in any event dominates views from the north. The extension is single storey but broad enough to have two pitched roofs, the ridges of which project up to or above the eaves on the C16 wing. The entrance to the public house from the retained car park is through a timber porch to the extension.

55. I have noted that the site is bound on its southern or the listed building side by trees and shrubs, some of which are evergreen and all of which are mature. I consider that the yard on the site is so physically separated from and affords such limited views of the listed building that it cannot sensibly be described as part of the surroundings in which the heritage asset is experienced. I also find that this was probably the case before the alleged change of use took place. From their density and height as well as visibility on the 1999 aerial photograph, it is evident that the boundary shrubs and trees were planted considerably before 2014.

56. The mixed use takes place within the setting of the listed building insofar as it leads to movements on the site access and shared drive. However, I have found that it is unlikely to generate more vehicular activity than the lawful use. It will not unacceptably alter who sees what of the listed building or levels of noise or light pollution in the surroundings in which the heritage asset is experienced.

57. The NPPF notes that the 'extent [of setting] is not fixed and may change as the asset and its surroundings evolve'. Whatever the historic relationship between the site and public house, I conclude that the mixed use preserves the setting of the listed building and does not harm the significance of this heritage asset. It does not conflict with the NPPF or DPD Policy DC67 which allows for development that does not adversely affect the setting of a listed building.

Flood Risk

58. The appeal site lies within an area designated as Flood Zone 3 (FZ3) or as having a high (1 in 100 or greater) annual probability of river flooding. It is undisputed that

[13] The curtilage of a building is generally understood as being an area of land that has an intimate association with the building. The surroundings in which a listed building is experienced may be more extensive than the curtilage.
[14] Indeed, the appellant notes that there has been a public house on this site since the C14.

the area is protected to a high standard by the Thames Tidal flood defences but would be at risk if the defences were breached or overtopped.

59. Applying the Government's Planning Practice Guidance (PPG), the appeal mixed use – since it does not involve any residential element – is categorised is 'less vulnerable' to flooding and 'appropriate' in FZ3[15]. I also note that non-residential changes of use do not need to be considered against the 'sequential test' which, as described in the NPPF and PPG, aims to steer development to reasonably available sites in areas with a lower risk of flooding.

60. However, the NPPF also expects decision-makers to ensure, when determining any planning applications, that development does not increase flood risk elsewhere. All applications for development in FZ3 should include a site-specific Flood Risk Assessment (FRA) and only be allowed where it can be demonstrated that:

- The development is appropriately flood resistant and resilient,
- The development incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate,
- Any residual risk can be safely managed, and
- Safe access and escape routes are included where appropriate as part of an agreed emergency plan[16].

61. The change of use has led to the carrying out of new activities and placement of more structures on the land; a sustainable drainage system should be incorporated unless it would be inappropriate. I consider that, given the employee and trainee numbers quoted below, more people are likely to be on the site for longer periods – and on the site overnight – if it is used as alleged rather than just for parking. That the mixed use is 'less vulnerable' to flooding does not obviate the need to show that it does not increase flood risk elsewhere and users can be kept safe.

62. The appellant has not submitted a site-specific FRA. One was included with the 2019 application but I have not seen it, and the parties' appeal statements suggest that it could not assist. The 2019 FRA did not assess the risk of tidal flooding on the site in the event of a breach of the defences because, says the appellant, 'a nearby development' was found by the Environment Agency (EA) in August 2017 to fall *'outside of our new 2017 tidal breach modelling…[and] be at extreme low residual risk of tidal flooding*'. The appellant has not said what or where the 'nearby development' was[17] and it seems that the EA objected to the 2019 application.

63. The PPG explains that, when considering safety, specific local circumstances need to be taken into account, including the characteristics of a possible flood event (for example, the type and source of flooding, depth, velocity and speed of onset); the safety of people within and around any building; the structural safety of buildings; and the impact of a flood on the essential services provided for a development[18]. That the EA found a low residual risk of tidal flooding on a nearby site is simply not enough for me to allow the appeal development.

64. It may be that, since we are talking about a 'less vulnerable' use taking place on previously developed land, the development could be made safe for its lifetime without increasing flood risk elsewhere. The PPG states that flood resistance and

[15] PPG paragraphs ref ID: 7-066-20140306 (Table 2) and 7-067-20140306 (Table 3); the lawful use is also one that is 'less vulnerable' to flooding.
[16] Paragraph 163 and footnote 50 of the NPPF
[17] It would not appear to have been the change of use to an MOT Testing Centre (P1795.18) discussed above.
[18] PPG paragraphs ref ID: 7-054-20140306

resilience measures may be suitable mitigation to manage flood risk in respect of less vulnerable uses[19]. Where that is shown to be the case, planning permission may be granted subject to conditions to ensure the submission, approval and implementation of flood resistance and resilience measures.

65. I am told that the 2019 FRA contained risk mitigation and evacuation information. However, the appellant has not given details beyond that the recommendations included the future preparation of a Business Flood Plan and registration with the EA's Flood Warning Direct service. It is not clear how I could find such mitigation sufficient when the FRA did not assess the risks or effects of flooding on the site as required by the PPG. I do not have the evidence to draft or impose any necessary and reasonable conditions that might ensure flood resistance and resilience.

66. The appellant has failed to demonstrate that the appeal yard could be made safe for its lifetime without increasing flood risk elsewhere. I conclude that a grant of permission would give rise to unacceptable risks from flooding in conflict with the NPPF and PPG. The consequences of flooding for life and property can be extremely serious and so the harm identified carries significant weight against the appeal.

Other Considerations: Economic, Social and Other Benefits

67. The Blara Group moved to the site when it signed the first of its now three existing seven year contracts with London Underground. It has been profitable since 2016 and had an annual turnover of some £2m since 2017. It employs, or did before the Covid-19 pandemic, 20 full-time staff and some 60 sub-contractors. With the site also being occupied by the Margal Group, permitting the alleged mixed use would support economic growth and surely result in greater economic benefits than reversion to the lawful use, given that the public house has another car park.

68. The NPPF expects planning decisions to help create conditions in which businesses can invest and enable the sustainable growth of all types of business in rural areas; significant weight should be placed on the need to support economic growth. I also note that London Plan 2021 (LP21) Policy GG5 seeks to ensure that London's economy diversifies and the benefits of economic success are shared more equitably[20] – while the occupiers of Willow Farm House support a use of the site that would benefit the local economy. I attach significant weight to the economic benefits that will accrue in this outer London area from the alleged mixed use.

69. I attach little weight, however, to the contribution of the use to the provision of infrastructure. I accept that the Blara Group works with Transport of London and Network Rail as well as London Underground, but details of the contracts and projects are too sketchy for me to accept that dismissing the appeal would cause the closure of an 'essential business' or undermine the provision of sustainable transport. Moreover, that the company needs to be 'in close proximity to London' is not evidence of needing to remain on a Green Belt site that is in FZ3.

70. The alleged mixed use includes a training centre because the Blara Group delivers NVQ courses on subjects related to work on the London Underground and wider rail network. It is or was planned that there would be up to 100 students on the site, and so I accept that the mixed use gives rise to benefits in terms of workforce education and skills. It seems to me that these benefits are economic as well as social in nature, and I have already attached weight to the economic benefits of the mixed use as a whole. However, I have not yet counted the social benefits would arise from the retention of jobs on the site.

[19] PPG paragraph ref ID: 7-060-20140306
[20] The appellant referred to Policies 2.7 and 4.1 of the London Plan 2016 but that has been replaced by the LP21.

71. The appellant has not explained why the Blara Group must deliver training on the same site that they also use for storage – and that is important because the land was already hard-surfaced and in that sense capable of being put to the latter use. The provision of training requires 'other permanent structures' as suggested in paragraph 4.28 of the appellant's statement, and the alleged mixed use as a whole is inappropriate development in the Green Belt because it has caused a loss of openness. Overall, therefore, I attach moderate weight to the education and other social benefits of the mixed use.

72. I also attach moderate weight to the link between the use and public house. I accept the points made by the occupiers of Willow Farm House that many local pubs have closed in the last ten years; Lennards is valued for its welcoming family-friendly atmosphere; and the DPD recognises the importance of retaining community facilities. There is nothing to show that the alleged mixed use is the only viable proposition for the site or that dismissing the appeal would result in the closure of the public house (or deterioration of the listed building) but it is likely that to an extent the freeholder will rely upon the income from letting out the site.

73. I have found that the alleged use need not cause unacceptable harm to the character and appearance of the area, but that is a neutral impact which does not weigh for or against the appeal. The same applies in relation to the undisputed claim by the occupiers of Willow Farm House that the use does not cause them 'any problem', presumably in terms of living conditions.

74. The Council granted permission (ref: P1795.18) for the change of use of a timber yard to an MOT Testing Centre at Unit 10, rear of Noakes Café, New Road, Rainham in March 2019 – but the report stated that that development would '*not have a materially adverse impact on the openness of the Green Belt as it relates to an existing building with associated hardstanding and existing metal palisade fencing*'. The alleged mixed use is different because, as explained above, it does cause a loss of openness.

75. I attach no weight to the suggestion that nearby industrial and commercial uses set a precedent for the appeal development. I must consider the deemed planning application on its merits and in accordance with current planning policy.

The Planning Balance and Conclusion

76. The NPPF states that inappropriate development in the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances which will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

77. The alleged change of use amounts to inappropriate development in the Green Belt. In accordance with the NPPF, I attach substantial weight to the harm caused to the Green Belt by reason of inappropriateness, and significant weight to the harm caused in respect of flood risk. As indicated above, the use does not cause unacceptable harm to the character and appearance of the area or the setting of the listed building, and it does not conflict with DPD Policy DC67, but those findings do not carry weight for or against the appeal.

78. In terms of the considerations in favour of a grant of permission, I attach significant weight to the economic benefits of the mixed use; moderate weight to the educational and other social benefits of the use; and moderate weight to the link between the use – or at least the rental of the site – and retention of the public house. However, I attach little weight to the contribution of the use to the provision of essential infrastructure.

79. Looking at the case as a whole, in accordance with the NPPF and the development plan, and with regard to all other matters raised, the considerations for the appeal do not clearly outweigh the harm caused by the alleged use to the Green Belt by reason of inappropriateness, together with the other, potentially serious harm caused in terms of flood risk. I conclude that the very special circumstances required to justify a grant of permission do not exist. The use conflicts with DPD Policy DC45 and thus the development plan, and with the NPPF. The appeal fails on ground (a) and the deemed planning application shall be refused.

80. It follows that the enforcement notice shall be upheld with the allegation corrected as above and the requirements corrected to follow suit. For the avoidance of doubt, the requirement to cease the alleged mixed use – which includes parking – should not be interpreted as taking away the rights of the landowner or others to carry out the lawful parking use on the land.

THE APPEAL ON GROUND (G)

81. Ground (g) is that the period for compliance with the requirements of the notice falls short of what is reasonable. The notice as issued provides that the use must cease, all associated structures and items must be removed and the land must be restored within two months; the appellant seeks an extension to time to one year.

82. I am satisfied that, whether or not the Blara Group and/or Margal Group has faced difficulties as a result of Covid-19, two months falls short of what is reasonable for them to look for an alternative site or sites – particularly when I am correcting the notice to require all elements of the mixed use to cease. The appellant has not said that it would be hard for either occupier to find somewhere else, but the Council has not shown that suitable sites are likely to be available. It is in the public as well as private interest that the firms on the site can properly search for other land where they can continue working to meet their contracts and secure jobs.

83. I reject the Council's submission that account should be taken of the time that has elapsed during the appeal process. The appellant and site occupiers were entitled to assume success on grounds (c)/(d) and (a). Without prejudice, they may wish to enter into discussions with the Council about the future of the site given my findings that Buildings 1, 2, 3, A and B are lawful, and on the main planning issues.

84. I conclude that it is reasonable to vary the notice by extending the period for compliance from two to 12 months. The appeal succeeds on ground (g).

FORMAL DECISION

85. It is directed that the enforcement notice is corrected and varied by:

- Deleting the text of paragraph 3 in its entirety and substituting: '*Without the benefit of planning permission, the making of a material change of use of the land shown hatched black on the attached site plan from a car parking area to use as an engineering, building and construction yard comprising a mix of office, training centre, storage and parking uses, plus incidental security and staff amenity use, facilitated by the construction or stationing of the structures marked as Buildings C-M on drawing no PL-5625_03 attached to this notice and the stationing of metal racks and containers, roll on/roll off skips and a caravan.*

- Deleting the text of paragraph 5 in its entirety and substituting:

    1. *Cease the use of the land as an engineering, building and construction yard comprising a mix of office, training centre, storage and parking uses, plus incidental security and staff amenity use.*

2. *Remove the structures marked as Buildings C-M on drawing no PL-5625_03 attached to this notice.*

3. *Remove the metal racks and containers, roll on/roll off skips, caravan and any other temporary structures, chattels, plant and machinery which facilitate the engineering, building and construction yard use.*

4. *Remove the materials and timber stored and vehicles parked on the land in connection with the engineering, building and construction yard use.*

5. *Remove all rubble and debris associated with taking steps 1-4 above and return the land to the condition it was in before the unauthorised change of use took place.*

- Deleting two months and substituting 12 months as the time for compliance with the notice; and
- Attaching to the enforcement notice the drawing no. PL-5625_03 (which is also attached for reference to this decision).

86. Subject to the corrections and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Jean Russell

INSPECTOR

The Planning Inspectorate

Plan

This is the Plan no. PL-5625_03 referred to in my decision dated:31 March 2021

by Jean Russell MA MRTPI

Appeal ref: APP/B5480/C/19/3242445

The land at Car Park at Lennards Public House, New Road, Rainham, RM13 9EB

NOT TO SCALE